

May 21, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION ON AN APPEAL FROM NOTICE AND ORDER.

SUBJECT: King County Department of Natural Resources, Surface Water Management Division
File No. **SWM-DIR 95-0057**

LESLIE CREED
Surface Water Management Division
Drainage Code Enforcement Appeal

Property located: 23825 Vashon Highway SW, Vashon Island, Washington

Appellant: Leslie Creed

Agency: King County Surface Water Management Division

Intervenor: Edson General Partnership, represented by Robert Keller

SUMMARY OF RECOMMENDATIONS AND DECISION:

Division's Preliminary:	Deny the Appeal
Division's Final:	Deny the Appeal
Examiner:	Deny the Appeal

PRELIMINARY REPORT:

The Surface Water Management Division's Preliminary Report on File No. DIR-SWM 95-0057 was received by the Examiner on April 17, 1996.

PUBLIC HEARING:

After reviewing the Surface Water Management Division's Preliminary Report and examining available information on file with the appeal, the Examiner conducted a public hearing on the subject as follows:

A pre-hearing conference on this appeal was held on January 24, 1996. The public hearing on this appeal was opened by the Examiner at 9:21 a.m., Wednesday, May 15, 1996, in the Cedar River Room (#2200), Key-Gateway Tower Building, 700 - Fifth Avenue, 22nd Floor/Suite 2200, Seattle, Washington, and closed at 3:52 p.m.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

FINDINGS, AND CONCLUSIONS: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On November 13, 1995 the King County Surface Water Management Division of the King County Department of Public Works¹ (hereinafter referred to as "SWM" or "the Division") issued a Notice and Order upon Leslie Creed (hereinafter the "Appellant") regarding her single family residence at 23825 Vashon Highway Southwest. Exhibit No. 6. The Notice and Order, based upon KCC 9.12.025.A.2, which prohibits the discharge of contaminants into surface and

¹ Since issuance of the Notice and Order, the King County Department of Public Works has reorganized. The Surface Water Management Division is now organizationally located within the Department of Natural Resources.

storm water or into Puget Sound, commands the Appellant to remove a pipe that is discharging "non-storm water" to the County storm drainage system. It also requires the Appellant to contact, within ten days, the Division's Drainage Investigation and Regulation Unit Water Quality Engineer. Dated November 13, 1995, the Notice and Order provided 14 days to achieve compliance. Failure to do so, the Notice and Order indicates, would result in the assessment of \$500.00 per violation.²

2. On November 20, 1995 Ms. Creed served her letter of appeal upon the Division. It contained no reason or basis for the appeal. In response to the Division's request, the Appellant filed her statement of appeal on January 8, 1996, approximately six weeks later. See Exhibits Nos. 7 & 10. KCC 20.24.090.C requires statements of appeal to be filed within 15 calendar days from the date of issuance of the appealed decision or action. However, the Department made no motion to dismiss this appeal.

The Appellant argues that enforcement of the Notice and Order would force her from her home and that she can not afford to rent another residence. She also argues that with additional time she could devise a system which should meet King County Board of Health standards. The system she hopes to propose within thirty to ninety days following the date of this hearing, has been approved for installation by other Counties in Washington State. She testifies that she has "every intention of fixing this septic problem at the earliest possible time." In addition, she argues that site circumstances, such as the presence of an old garden "which is true to its period" on the property and the presence of uncontrolled stormwater run-off from neighboring properties, makes compliance with a standard septic design difficult to achieve. For that reason, the Appellant seeks approval of a compact unit based on new technology.

3. The Appellant agrees to the essential facts in this case. A pipe conveys sewage and grey water from the Creed residence

to a storm drain on the abutting Edson Limited Partnership (hereinafter "Intervenor" or "Intervenor Edson") property. This underground storm drainage pipe discharges the sewage and grey water to a storm conveyance system which discharges into the Quartermaster Harbor of Puget Sound, nearby. The Appellant is fully aware that the flushing from her toilet and plumbing system are deposited upon the Quartermaster Harbor beach (testimony, Creed). The Appellant testifies to having observed dye tests conducted by a King County Health Department officer which demonstrates the direct connection of her household plumbing system to Quartermaster Harbor.

4. As indicated in finding No. 1, above, the Notice and Order cites KCC 9.12.025.A.2 which states:

Illicit connections. Any connection, identified by the Director that could convey anything not composed entirely of surface and storm water directly to surface and storm water and ground water is considered an illicit connection and is prohibited. . .

KCC 9.12.025.A.2 exempts certain "allowable discharges" such as lawn watering, residential car/boat washing, and so on.

KCC 9.12.025.A.1 identifies "prohibited discharges":

It is unlawful for any person to discharge any contaminates into surface and storm water, ground water or Puget Sound. Contaminates include but are not limited to . . . drain cleaners . . . soaps, detergents or ammonia . . . heated water . . . sewage . . . food wastes . . .

5. KCC 9.12.050 authorizes any duly authorized representative of the Director of the Department of Public Works "to carry out enforcement actions pursuant to the enforcement and penalty provisions of KCC Title 23 . . . "

² KCC 23.08.100.B states (in part):
 Each and every day or portion thereof during which any violation is committed, continued, permitted or not corrected shall be deemed a violation for purposes of this Title.
 KCC Title 23 establishes the enforcement procedures and penalty assessment schedule which governs the Division's Surface Water Management code enforcement.

KCC 9.12.050.D authorizes the Division to make such inspections and take such actions as may be required to enforce the provisions of KCC 9.12.

6. The Washington State Department of Ecology has issued a National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge Permit for discharges from municipal separate storm sewers for the "Cedar/Green Water Quality Management Area". Vashon Island is covered under this permit. King County is a co-permittee for this permit. The permit requires that the County "shall effectively prohibit illicit discharges to the municipal separate storm sewers owned or operated by the permittee." The storm conveyance systems which conveys storm drainage from the Intervenor Edson property (containing sewage discharge from the Appellant property) is owned and/or operated by King County. According to the Department, KCC 9.12 was adopted in part to comply with the NPDES permit requirements.
7. The Appellant has been aware of the sewage discharge to Quartermaster Harbor from her residence for at least ten years. In addition, she has participated in a variety of communications with Seattle-King County Department of Public Health officials regarding the discharges and various schemes to comply with the King County Board of Health regulations which govern septic treatment system design. The Health Department has provided to the Appellant the specifications required to achieve an easily approved design; that is, a design which could be approved by the District Sanitarian without appeal to the Sewage Review Board.

Arguing that a standard drainfield design would disrupt the old garden which is "true to its period" and arguing further that storm water flow across the subject property would diminish drainfield viability, the Appellant has never submitted a standard drainfield design application. She has, however, submitted designs for "alternative" systems which the King County Sewage Review Board has denied. On August 29, 1995 the Board approved the Appellant's request to use a septic tank as a "temporary sewage tank" pending the design and installation of a permanent on-site treatment and disposal system, specifying time restrictions and specification conditions intended to assure conformance with Board of Health regulations. While the Appellant has indicated an interest in applying for a holding tank in the past, she has indicated she either will not, or can not, pay any additional permit fees. The Appellant now testifies that a holding tank would be too costly to operate and maintain, and that she has no intention of pursuing that sort of temporary solution.

8. The catch basin and connecting pipes located in the driving lane of Vashon Highway Southwest in front of Ms. Creed's residence needs to be inspected and maintained due to past roadway failure. The catch basin has currently settled approximately two inches, which causes a roadway hazard. The catch basin can not be inspected and maintained due to the presence of raw sewage from the Appellant's residence, which creates a health hazard to the road crews. Ms. Creed has volunteered to vacate her residence for a short period of time, or switch to the use of a portable toilet. Neither of these solutions is satisfactory to the Roads Division. A short term absence from the residence would not decontaminate the catch basin for maintenance. Use of a portable toilet without flowing water would violate health regulations.
9. Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

CONCLUSIONS:

1. The essential facts in this case are agreed upon by the parties. See finding No. 3, above. These facts, which are further amply documented by the evidence of record, demonstrate that the Appellant is maintaining an illicit storm drainage connection as defined and prohibited by KCC 9.12.025.
2. Further, the Division not only has the authority to demand disconnection of the illicit connection, but is mandated by its contract with the State Department of Ecology (SDOE) to do so. Failure of the Division to pursue this enforcement could result in loss of public funds dispersed by the SDOE for water quality management purposes. Thus, the Appellant's recalcitrance to install a standard design septic system jeopardizes not only the Puget Sound water quality within Quartermaster Harbor, but also the public interest in water quality in general.
3. The Appellant's pleas for leniency and delays based upon personal hardship are old, at least a decade old. While the Appellant regularly reiterates a positive interest in environmental quality and an interest in solving this violation, the result of the last ten years of patience and delay on the part of the Health Department (and now, Surface Water Management Division also) has resulted in a net improvement of absolutely zero. Surface Water Management's demand to correct the problem within two weeks, in view of the Division's awareness of this long history of knowledgeable and purposeful noncompliance, is reasonable.

Now, **another** new technology system is being touted as the solution, although it is unknown whether the specifications will meet County standards or whether the costs for acquisition, installation and operation are within the Appellant's grasp. While this notion sounds as if it has promise when it is described by the Appellant, the hearing record is devoid of any evidence that it would solve the illicit discharge problem any better than any number of other solutions which have been discussed or sought over the past decade. In the meanwhile, the solution--a standard design drainfield system--has always been, and continues to be, available. The efficiency of such a system can be improved by proper collection and conveyance of storm drainage across the subject property. Installation of a standard drainfield beneath a garden does not violate County Health Regulations.

These circumstances call for an immediate standard design septic system solution or immediate vacation of the subject property. The dilly-dallying around about "alternative systems" has gone on too long and the public interest has suffered too long.

4. The Order which follows below is fully supported by the facts in evidence and by the legal authority contained in KCC 9.12 and KCC Title 23.
5. Any portion of Findings No. 1 through No. 8 which may be construed as a conclusion is adopted as such.

DECISION:

The appeal is **DENIED**.

ORDER:

The Appellant shall either vacate the premises of all human habitation, or shall file a complete on-site septic treatment system installation application **not later than July 15, 1996**, or shall be assessed \$500.00 per day, per violation, as indicated by KCC 23.08.100.B and KCC 9.12.080.

If the application is denied, the Appellant shall vacate the premises **within fifteen (15) days** from the date of that denial.

If the application is approved, then the on-site sewage treatment system shall be installed consistent with the Seattle-King County Department of Public Health (SKDPH) approved design, and shall obtain final installation inspection approval as required by the SKDPH **not later than the ninetieth calendar day** following the SKDPH approval, or all human inhabitants shall immediately vacate the subject property.

Nothing in this Order shall be construed as limiting any other civil or criminal remedy available to the Surface Water Management Division or the King County Prosecuting Attorney.

ORDERED this 21st day of May, 1996.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 21st day of May, 1996, to the following parties and interested persons:

Leslie Creed
P.O. Box 13055 - Burton
Vashon, Washington 98070

Robert Keller
The Edson Limited Partnership
6030 SW 248th Street
Vashon, Washington 98070

Bill Casper
P.O. Box 741
Vashon, WA 98070

Elizabeth Dinan-Slack
10904 SW 238th
Vashon, WA 98070

Robin Hughes
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Vashon, WA 98070

Richard P. Schnelz
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William C. Weigand
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Garrit Koepping
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P.O. Box 447
Vashon, WA 98070

Susan Clarke, KC Dept. Nat. Resources, Surface Water Mgt. Div.
 Curt Crawford, KC Dept. Nat. Resources, Surface Water Mgt. Div.
 Jim Didricksen, KC Dept. Transportation, Roads and Engrng. Div.
 Virginia Kirk, KC Prosecuting Attorney's Office, Civil Division
 Lindy Rees, KC Dept. Transportation, Roads and Engrng. Div.
 Kate Rhoads, KC Dept. Nat. Resources, Surface Water Mgt. Div.
 David Stark, KC Dept. Nat. Resources, Surface Water Mgt. Div.
 Charlie Sundberg, King County Cultural Resources Division
 Roman Welyczko, KC Health Department, Envir. Health Division
 Gale Yuen, KC Health Department, Envir. Health Division

NOTICE OF RIGHT TO APPEAL

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are commenced in Superior Court within the time provided by law.

MINUTES OF THE MAY 15, 1996, PUBLIC HEARING ON DEPARTMENT OF NATURAL RESOURCES, SURFACE WATER MANAGEMENT DIVISION FILE NO. SWM-DIR 95-0057/CREED:

R. S. Titus was the Hearing Examiner in this matter. Participating at the hearing were Leslie Creed/Appellant, Robin Hughes, Robert Keller/Intervenor, Richard P. Schnelz. Representing the Seattle-King County Department of Public Health and participating were Gale Yuen, Roman Welyczko and Ernesto Navarro; representing the King County Department of Transportation and participating was Lindy Rees; and representing the King County Department of Natural Resources/Surface Water Management Division and participating were Kate Rhoads, Susan Clarke, and David Stark.

The following exhibits were offered and entered into the record:

Exhibit No. 1	King County Department of Natural Resources/ Surface Water Management Division Drainage Investigation Report, file No. 95-0057, dated January 18, 1995, with attached letter, dated February 13, 1995, from Jim Kramer/Surface Water Management Division, to Robert Keller/ Complainant
Exhibit No. 2	Copy of King County Code, Chapter 9.12 (Water Quality)
Exhibit No. 3	Letter, dated September 26, 1995, from James D. Krull/Washington State Department of Ecology, to Jim Kramer/Surface Water Management Division, with attached National Pollutant Discharge Elimination System and State Waste Discharge General Permit (#WASM23001)
Exhibit No. 4	Copy of Code 40 of Federal Regulations, Chapter 1, Section 122.41
Exhibit No. 5	Letter, dated August 29, 1995, from John P. Nordin/Sewage Review Board/Seattle-King County Department of Public Health, to Leslie Creed, re: Sewage Review Board decision (specifically page 2, finding No. 1)
Exhibit No. 6	Notice of King County Code Violation: Civil Penalty Order, dated November 13, 1995
Exhibit No. 7	Letter, dated November 16, 1995, from Leslie Creed, to Susan Clarke/Surface Water Management Division, re: appeal of Notice and Order
Exhibit No. 8A	Letter, dated December 13, 1995, from Curt Crawford/Surface Water Management Division, to Leslie Creed, re: hearing notice
Exhibit No. 8B	Notice of Hearing, dated December 21, 1995, issued by King County Hearing Examiner's office
Exhibit No. 9	Notice of Pre-Hearing Conference, dated January 5, 1996, issued by King County Hearing Examiner's office
Exhibit No. 10	Letter, dated January 8, 1996, from Leslie Creed, to Susan Clark/Surface Water Management Division, re: written details of appeal
Exhibit No. 11	Drainage map, dated January 18, 1996, prepared by Pat Simmons/Surface Water Management Division, re: area of Creed property
Exhibit No. 12	Assessor's map (topographic map), re: area of Creed property
Exhibit No. 13	Color photos (7), dated October 17, 1995, taken by Department of Natural Resources/Surface Water Management Division: 13A Looking north on Vashon Island Highway; sewer outflow enters storm drain system north of catch basin in foreground 13B Looking north on Vashon Island Highway; sinking catch basin in front of Creed residence 13C Catch basin in need of repair; note standing water on shoulder of road, extending into driving lane 13D Looking south on Vashon Island Highway; catch basin in foreground where 18" cross culvert takes flows to Puget Sound 13E Looking east to Quartermaster Harbor and Puget Sound; white road stripe indicates approximate location of 18" cross culvert 13F Concrete out-fall pipe (18") from roadway storm drainage system to beach; note green and brown growth on rocks 13G Concrete out-fall pipe location; when tide is higher, discharge is directly into water
Exhibit No. 14	Memorandum, dated April 8, 1996, from Roman Welyczko/Seattle-King County Department of Public Health, re: chronology of communication between Health Department and Leslie Creed
Exhibit No. 15	Memorandum, dated April 9, 1996, from Kate Rhoads/Surface Water Management Division, to R.S. Titus/Deputy King County Hearing Examiner, re: pre-hearing order, agreed relevant facts, scheduled disclosure
Exhibit No. 16	Copy of King County Board of Health, Title 13, specifically 13.52.010/13.12.080/13.28.030
Exhibit No. 17	Copy of Washington State Administrative Code (WAC), Chapter 246-272-09501(1) and Chapter 246-272-25001(1)

RST:var

